



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

4734

REPLY TO THE ATTENTION OF

VIA ELECTRONIC AND
FIRST CLASS MAIL

January 23, 2006

Joseph F. Madonia, Esq.
Wildman, Harrold
225 W. Wacker Drive,
Suite 3000
Chicago, Illinois 60606

EPA Region 5 Records Ctr.



248544

Re: 161 E. Grand Mediation Proposal

Dear Joe:

Thank you for taking the time this past Tuesday morning to discuss the prospect of using mediation services to help our clients' work together more productively with respect to the 161 E. Grand Building.

It is U.S. EPA's perspective that maintenance, renovation, and demolition activities at the ninety-year old building may present a threat of release of thorium. We are encouraged by Optimus' cooperation with respect to allowing U.S. EPA, with Department of Energy's (DOE's) assistance, to survey and sample the debris from the heating, ventilation, and air conditioning (HVAC) work that was performed in the last several months. We understand that it is exceedingly important to the building owner that we respect the privacy of his employees and patrons and that our work must be discreet. We look forward to receiving Environ's report regarding its surveillance of the HVAC project and to setting a date in February for DOE's surveillance of the drummed material.

We understand that the building owner may be of the mind that it is inadvisable or perhaps unnecessary to jointly develop with U.S. EPA plans and procedures to control radiation exposure or release during future maintenance, renovation or demolition activities. Proceeding on a project by project approach may offer false allure especially to the extent that it may seem like an effective way to keep the "government away from the door." As you know, thorium has an estimated half-life of 14 billion years. That certainly suggests that the contamination in the building, unless properly identified and removed, will outlive us all. Also, while it may be the intent of the building owner to keep U.S. EPA apprised of work that may result in a release, oftentimes maintenance and even renovation and demolition activities can arise unexpectedly and

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become emergencies. While it is unlikely we can foresee all exigencies, it seems that without plans and procedures in place that are acceptable to both our clients, it is more probable than less, that work in the building may create a threat of release. Of course, it “almost goes without saying” that it is crucial that both of our clients are positioned to assure the public that there is no threat of release or unacceptable risk associated with the building. We occasionally receive inquiries from regarding the building; we are limited in our ability to respond to such inquiries.

I am optimistic that mediation might improve our working relationship. It seems we can make little progress until we work to dissipate the cloud of distrust that keeps our clients from recognizing the value of cooperation with one another.

Specific goals that we would like to achieve through mediation are the building owner agreeing with the following actions:

Call or e-mail U.S. EPA when anticipating work involving the structure or moving equipment that may have shielded gamma radiation (e.g. sawing through floors, walls, roofs, bricks, replacing large equipment in basement, demolition);

Invite U.S. EPA to participate in planning for radiation precautions during renovation, maintenance, and demolition;

Invite U.S. EPA to take radiation measurements of areas where radioactive materials may be exposed or disposed of; and

Invite U.S. EPA to take radiation measurements (including sampling) during and after cleanup to assure that all impacted radioactive material is removed- including the area over the reception area and 2nd floor and in areas where HVAC work was conducted.

Work with U.S. EPA to help resolve comprehensively public inquiries about the building.

Again, from U.S. EPA's perspective, as long as radioactive materials remain in the building, we would like to be able to confidently assure the public that the building owner and the agency have fully assessed the extent of radioactive contamination in the building and that all appropriate steps have been taken to prevent any threat of release.

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I look forward to discussing these matters further with you and your client.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary".

Mary L. Fulghum
Associate Regional Counsel